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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,807	04/15/2004	Leo J. Yodock III	49737.23	1568
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EXAMINER				
SAFAVI, MICHAEL				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/826,807	Applicant(s) YODOCK ET AL.	
	Examiner M. Safavi	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on November 15, 2006 & December 13, 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8, 10-15, 19-24, 26-28, 43, 44 and 46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15, 19-24 and 26-28 is/are allowed.
- 6) ☒ Claim(s) 43, 44 and 46 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Specification

The disclosure is objected to because of the following informalities: The specification appears to present numeral 220 as denoting both a "platform" and "cross braces". See page 30, for example. Further, the specification appears to present numeral 324 as denoting both an "all-thread rod" and an "end" of a channel.

Appropriate correction is required.

Claim Objections

Claim 27 is objected to under 37 C.F.R. § 1.75(a) because of the following informalities: Claim 27 presents "a nut" in line 1 and "said third nut" in line 2. However, no second nut has ever been introduced and "a nut" has previously been introduced within claim 24 from which claim 27 depends. It is believed that line 1 of claim 27 should recite --a second nut-- while line 2 of claim 27 should recite --said second nut--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 43, 44, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Riley '012. As for **claim 43**, Riley discloses, Figs. 1 and 2, a housing 18 having a top wall, a bottom wall, opposed side walls and opposed end walls connected to form a hollow interior; a body of foam material 17 located within said hollow interior; at least one cable 4 connected to said housing and extending between said opposed end walls; a ballast weight 19, 20 being effective, when said housing is placed in the water, to maintain said at least one cable out of the water. The cable 4 can be seen as completely surrounded by the foam 17 thus, embedded within said body of foam material, (**claim 44**). The cable 4 has opposed ends, which protrude from the end walls and adapted to connect to a coupling device, (**claim 46**).

Claims 43, 44, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Juodis et al. '297. As for **claim 43**, Juodis et al. discloses, Figs. 1-3, a housing 10 having a top wall, a bottom wall, opposed side walls and opposed end walls connected to form a hollow interior; a body of foam material, col. 10, lines 42-49, located within said hollow interior; at least one cable 20 connected to said housing and extending between said opposed end walls; a ballast weight 24 or 30 being effective, when said housing is placed in the water, to maintain said at least one cable out of the

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water. The cable 20 can be seen as completely surrounded by the foam thus, embedded within said body of foam material, (**claim 44**). The cable 20 has opposed ends, which protrude from the end walls and adapted to connect to a coupling device, (**claim 46**).

Claim 43 is rejected under 35 U.S.C. 102(a) as being anticipated by Foote '616. As for **claim 43**, Foote discloses, Figs. 1, 8, and 9, a housing 100 having a top wall, a bottom wall, opposed side walls and opposed end walls connected to form a hollow interior; a body of foam material 17 located within said hollow interior; at least one cable 31, 32 connected to said housing and extending between said opposed end walls; a ballast weight 20 being effective, when said housing is placed in the water, to maintain said at least one cable out of the water.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43, 44, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sessions '131 in view of Riley '012.

Sessions '131 discloses, Figs. 2-5, a body of material 17 having a top wall, a bottom wall, opposed side walls and opposed end walls connected to form a hollow

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interior; at least one cable 19 connected to said body of material and extending between said opposed end walls; a ballast weight 18 being effective, when said housing is placed in the water, to maintain said at least one cable out of the water. The cable 19 can be seen as completely surrounded by the body of material 17 thus, embedded within said body of foam material, (**claim 44**). The cable 10 has opposed ends 20, which protrude from the end walls and adapted to connect to a coupling device, (**claim 46**). Sessions does not appear to specifically disclose the body of material 17 as a foam material.

However, Riley '012 discloses a barrier float formed of a foam material 17. Therefore, to have formed the Sessions '131 barrier 17 from a foam material, thus allowing use of such old and well known floatable material, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Riley '012.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 43, 44, and 46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87 of copending Application No. 11/320,382. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 43, 44, and 46 are generic to all that is recited within claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87 of copending Application No. 11/320,382. In other words, claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87 of copending Application No. 11/320,382 fully encompass the subject matter of claims 43, 44, and 46 and therefore anticipate claims 43, 44, and 46. Since claims 43, 44, and 46 are anticipated by claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87 of the copending application, they are not patentably distinct from claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87 of copending Application No. 11/320,382. Thus, the invention of claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87 of copending Application No. 11/320,382 is in effect a "species" of the "generic" invention of claims 43, 44, and 46. It has been held that the generic invention is anticipated by the species, see *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claims 43, 44, and 46 are fully anticipated, (fully encompassed), by claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87 of copending

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Application No. 11/320,382, claims 43, 44, and 46 are not patentably distinct from claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87 of copending Application No. 11/320,382, regardless of any additional subject matter present in claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 43, 44, and 46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87 of copending Application No. 11/320,382 in view of any of Sessions '131, Riley '012, Juodis et al. '297, and Foote '616. Claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87 of copending Application No. 11/320,382 define a floating barrier unit having a top wall, a bottom wall, opposed side walls and opposed end walls connected to form a hollow interior; a body of foam material located within the hollow interior; a connecting device effective to connect barrier units end-to-end; a ballast weight being effective, when said housing is placed in the water, to maintain the unit in a predetermined orientation. Claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87 of copending Application No. 11/320,382 do not appear to specifically present at least one cable connected to the unit and extending between opposed end walls.

However, each of Sessions '131, Riley '012, Juodis et al. '297, and Foote '616 teach utilization of a cable extending through and along a floating barrier unit to connect

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barrier units end-to-end. Therefore, to have provided the floating barrier unit defined by claims 34-38, 42, 55, 63, 69, 70, 72, 78-81, 83, 84, 86, and 87 of copending Application No. 11/320,382 with a cable extending through and along the floating barrier unit, thus serving to connect barrier units end-to-end, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by any of Sessions '131, Riley '012, Juodis et al. '297, and Foote '616.

This is a provisional obviousness-type double patenting rejection.

Claim 27 would be allowable if rewritten to overcome the objection under 37 C.F.R. § 1.75(a), set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 1-5, 7, 8, 10-15, 19-24, 26, and 28 are allowed.

Response to Arguments

Applicant's arguments with respect to claims 43, 44, and 46 have been considered but are moot in view of the new ground(s) of rejection.

In accordance with M.P.E.P. § 2001.06(b), the individuals covered by 37 CFR 1.56 have a duty to bring to the attention of the examiner, or other Office official involved with the examination of a particular application, information within their knowledge as to other copending United States applications which are "material to patentability" of the application in question.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

M. Safavi
September 10, 2007

